USDC SDNY

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 12/17/2020
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UNITED STATES OF AMERICA,	:	
-V-	:	20-CR-537-2 (JPC)
MARIO DE LA ROSA,	:	<u>ORDER</u>
Defendant.	: :	
	: X	

JOHN P. CRONAN, United States District Judge:

The Court has scheduled a proceeding for Defendant Mario De La Rosa's anticipated guilty plea for tomorrow, December 18, 2020, at 3:30 p.m. Earlier today, the Court received a plea agreement from Defendant's counsel purportedly signed by Defendant, his attorney, the assigned Assistant United States Attorney, and her supervisor. The Government provided the Court with a draft of the same agreement yesterday.

In calculating the parties' stipulated sentencing range under the United States Sentencing Guidelines for each of Counts Two and Three, the plea agreement reads: "Pursuant to U.S.S.G. \$2B3.1(b)(2)(E), 5 points are added because a firearm was brandished or possessed." Section 2B3.1(b)(2)(E), however, does not provide for a five-level enhancement for brandishing or possessing a *firearm*; it provides for a three-level enhancement for brandishing or possessing a *dangerous weapon*. The five-level enhancement for brandishing or possessing a firearm is set forth at \$2B3.1(b)(2)(C):

(A) If a firearm was discharged, increase by 7 levels; (B) if a firearm was otherwise used, increase by 6 levels; (C) if a firearm was brandished or possessed, increase by 5 levels; (D) if a dangerous weapon was otherwise used, increase by 4 levels; (E) if a dangerous weapon was brandished or possessed, increase by 3 levels; or (F) if a threat of death was made, increase by 2 levels.

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U.S.S.G. § 2B3.1(b)(2) (Nov. 1, 2018). Thus, it appears that the plea agreement contains

typographical errors in discussing the § 2B3.1(b)(2) enhancement for Counts Two and Three, by

referencing § 2B3.1(b)(2)(E) instead of § 2B3.1(b)(2)(C).

To avoid any confusion as to the range stipulated by the parties, as well as the basis for

calculating that range, the parties should be prepared to address at the guilty plea proceeding

whether the plea agreement provided to the Court contains errors in discussing the § 2B3.1(b)(2)

enhancement for Counts Two and Three, as well as whether the parties stipulate that a five-level

enhancement under § 2B3.1(b)(2)(C) for brandishing or possessing a firearm is appropriate for

those Counts. Alternatively, in advance of the guilty plea proceeding, the parties may provide the

Court with a revised plea agreement, signed by Defendant, his attorney, and the Government.

SO ORDERED.

Dated: December 17, 2020

New York, New York

JOHN P. CRONAN

United States District Judge

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